

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

IN RE ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION	Master File No. 2:12-MD-02327 MDL 2327
THIS DOCUMENT RELATES TO: WAVE 5 CASES	JOSEPH R. GOODWIN U.S. DISTRICT JUDGE

**DEFENDANTS' MOTION FOR PROTECTIVE
ORDER PRECLUDING *DE BENE ESSE* DEPOSITION OF
PLAINTIFFS' EXPERT WITNESS SCOTT A. GUELCHER, PH.D.**

COMES NOW, Defendants Ethicon, Inc. and Johnson & Johnson (collectively, “Ethicon”), pursuant to Federal Rule of Civil Procedure 26 and this Court’s Pretrial Orders, respectfully move this Court for a Protective Order precluding Plaintiffs from taking a *de bene esse* deposition of Scott A. Guelcher, Ph.D. for the purpose of preserving his testimony for use at trial in Wave 5, or any other trials. As discussed in greater detail in the accompanying Memorandum of Law, Plaintiffs failed to provide allege or demonstrate that Dr. Guelcher—an expert witness Plaintiffs retained and designated—would be unavailable to testify at any Wave 5 trials, or any other trial for which they now seek to preserve his testimony. Plaintiffs’ unilateral notice of a *de bene esse* deposition is inconsistent with the Federal Rules of Civil Procedure and applicable case law, and permitting Plaintiffs to proceed with such a deposition would result in significant prejudice to Ethicon.

WHEREFORE, for the reasons set forth above and in the accompanying Memorandum of Law and the attached exhibits, Ethicon respectfully requests that the Court enter a Protective

Order precluding Plaintiffs from taking a *de bene esse* deposition of Dr. Guelcher. Ethicon requests oral argument on this Motion.

Respectfully submitted,

/s/ David B. Thomas

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to CM/ECF participants registered to receive service in this MDL.

/s/ David B. Thomas

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